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OFFICE OF PETITIONS

In re Application of
Zimmerman, et al.
Application No. 09/311,333
Filed: May 13, 1999
Attorney Docket No. A 23,960
For: IN-THE-FIELD ADAPTATION OF A
LARGE VOCABULARY AUTOMATIC
SPEECH RECOGNIZER (ASR)

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed February 22, 2005 (certificate of mailing date February 18, 2005) and supplemented on November 9, 2005 (certificate of mailing date November 7, 2005) to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **GRANTED**.

The Office contends that the above-identified application became abandoned for failure to submit a reply to the July 28, 2004 final Office action which set an extendable three month period for reply. No extensions of time or timely reply being received, the Office considered this application abandoned on October 29, 2004. A Notice of Abandonment was mailed on October 6, 2005.

Petitioners allege that the July 28, 2004 final Office action was not received.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

A review of the record indicates no irregularity in the mailing of the July 28, 2004 final Office action, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicants at the correspondence address of record.

While the February 22, 2005 (certificate of mailing date February 18, 2005) petition argues that the correspondence was mailed to an incorrect former address, the official record shows that the last correspondence address direction was found in an October 15, 2002 associate power of attorney that specified that all correspondence should be mailed to the Tarrytown, NY address, not the Briarcliff Manor, NY address. The Notice of Customer Number Record Change dated December 18, 2003 does not mention this application. Therefore, the Office properly mailed the July 28, 2004 correspondence to the Tarrytown, NY address.

The presumption that the correspondence was received at that address may be overcome by a showing that the aforementioned communication was not in fact received.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

Petitioners have submitted a copy of the docket record where the requirement would have been entered had the July 28, 2004 final Office action been received. In addition, practitioner referenced the docket record in the petition and stated that a review of the application's file jacket and docket record for the July 28, 2004 non-final Office action was fruitless. It is noted that the attorney making the statement is Daniel J. Piotrowski, who has been associated with the Tarrytown, NY mailing address, rather than the Briarcliff Manor, NY mailing address.

Petitioners have established non-receipt. The petition is granted, the holding of abandonment is withdrawn, and the October 6, 2005 Notice of Abandonment is vacated.

Petitioners filed an amendment in response to the July 28, 2004 final Office action on February 22, 2005 (certificate of mailing date February 18, 2005). As such, there is no need to re-mail the July 28, 2004 final Office action with a new period set for reply.

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

After the mailing of this decision, the application will be returned to Technology Center A.U. 2626 for consideration of the amendment filed on February 22, 2005 (certificate of mailing date February 18, 2005).

Telephone inquiries may be directed to the undersigned at (571) 272-3230.

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